



State of New York County of Broome Government Offices

Department of Planning and Economic Development
Jason T. Garnar, County Executive · Beth Lucas, Director

October 20, 2021

Supervisor Michael Marinaccio
Town of Dickinson
531 Old Front Street
Binghamton, New York 13905

RE: Review Pursuant to Section 239-l and -m of the General Municipal Law

Dear Supervisor Marinaccio:

The Broome County Department of Planning and Economic Development has received your request for review of the below captioned matter:

Applicant: Bapa Network LLC
Project: Rezoning: Construct Dunkin on 58 and 60 Downs, if rezoning (R-2 to HIC) approved, ZBA special permit and variances and PB site plan review required
Municipality: Town of Dickinson
Tax Map No: 143.51-3-5 and 143.51-3-6
BC Case: 239-2021-138 (239-2015-141)

The Planning Department has reviewed the above-cited case and has determined that the project as submitted would have significant negative county-wide and inter-community impacts within the intent of General Municipal Law Section 239-l as described below and for these reasons recommends denial of the project.

GML Section 239-l (a) Compatibility of various land uses with one another, and; (b) Traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thorough fare facilities

- The BMTS, NYSDOT, and DPW comments point to negative traffic impacts based on the proposed commercial development and do not support the rezoning (see attached comments for details).
 - NYSDOT has significant concerns based on the proposed or potential use of this site, including vehicles queuing within the travel lanes of Downs Avenue, which would create severe traffic obstruction and unsafe conditions, particularly as peak usage periods, and concern that the Downs Avenue configuration is not conducive to a highway-based business corridor.
 - BMTS agrees completely with the NYSDOT comments and states that "Even without a complete application or TIS we are aware, as detailed by NYSDOT, that establishing a commercial development on this site would result in negative traffic impacts that likely could not be mitigated."
 - DPW does not recommend the rezoning based on observations, including it does not appear that there is adequate (frontage) distance to install two driveways (in and out) in accordance with NYDOT guidance, multiple traffic conflict points, and likely queuing on Downs Avenue, Airport Road/Prospect Street, and CFJ Boulevard signalized intersection.

GML Section 239-l (e) drainage

- The concept plan shows a line for a proposed retaining wall but provides no engineering drawings or feasibility studies. The project site includes steep slopes of over 15% on approximately 40 percent of the property and requires significant grading, earthwork, and a retaining wall to accommodate the

project. This may create potential drainage impacts and unstable site conditions for surrounding properties.

GML Section 239-I (g) Official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures


- Town of Dickinson 2017 Comprehensive Plan Update states: "Slopes above 15 percent are steep, difficult to access and more susceptible to serious erosion and septic system failure. In general, lands with a slope above 15 percent are unsuitable for development."
- Broome County Comprehensive Plan states: "Disturbance of steep slopes for development can be costly including increased property damage, public safety hazards and water quality issues due to erosion and sedimentation, mudslides, or localized flooding."
- HIC District: The Town should ensure that the proposed stand-alone food service drive-through business meets the HIC use and dimensional regulations. The HIC permits vehicle service and repair; motel; and restaurant as principal uses subject to special permit conditions of Section 600-35. Section 600-35 conditions include: a minimum setback from the right-of-way of 30 feet; one access from the street to each lot or land use; 8-foot landscaped strip; and no more than 80 percent of any lot shall be covered by buildings, parking areas or access drives. The project concept plan does not appear to meet these conditions.
- The SEQR EAF does not adequately describe the rezoning or site plan and does not describe the special use permit or variance. The SEQR EAF does not address the traffic impacts, among other impacts, or include a TIS or geotechnical study. See BMTS, NYSDOT, DPW, and BCHD comments. The Town should ensure that consideration of the "whole" action is taking place as required by SEQR to avoid segmentation. The SEQR Handbook states:
 - Interrelated or phased decisions should not be made without consideration of their consequences for the whole action, even if several agencies are involved in such decisions. Each agency should consider the environmental impacts of the entire action before approving, funding, or undertaking any specific element of the action.
 - If the zoning change is proposed by a project sponsor in conjunction with a proposal, the impacts of both the rezoning and the specific development must be considered in determining environmental impacts.
 - A municipality should consider the most intensive uses allowable under the proposed zoning to judge potential impacts.

The case file was routed to the Binghamton Metropolitan Transportation Study (BMTS), New York State Department of Transportation (NYSDOT), Broome County Department of Public Works (DPW), and Broome County Health Department (BCHD). Enclosed are comments from BMTS, NYSDOT, DPW, and BCHD that need to be addressed.

Please submit a copy of your decision in this case within seven (7) days of taking action so it can be included in the case record.

Thank you for your cooperation.

Sincerely,



Beth Lucas
Director

BL/lmz

cc: Mr. Steve Rafferty, Ordinance Enforcement Officer, Town of Dickinson
BC file copy

Zier, Lora M.

From: Zier, Lora M.
Sent: Friday, October 8, 2021 12:38 PM
To: Stephen Rafferty
Subject: BMTS DOT DPW Comments 239-2021-138 Dickinson RZ Dunkin 58 60 Downs
Attachments: 239-2021-138 BMTS DOT DPW Comments Dunkin RZ 58 60 Downs.pdf

Hello Steve:

Please see the attached BMTS, DOT, and DPW comments for your distribution for this project.

I sent you the BCHD comments on 9.22. Comments from BC Planning will be forthcoming.

Sincerely,
Lora Zier
Senior Planner
Broome County Department of
Planning and Economic Development
Telephone: (607) 778-2114
Lora.Zier@BroomeCounty.US

Zier, Lora M.

From: McCullen, Leigh A.
Sent: Wednesday, October 6, 2021 11:36 AM
To: Zier, Lora M.
Cc: 'Murphy, Sean W. (DOT)'; Yonkoski, Jennifer L.; Gowe, Brenda L.
Subject: RE: 239-2021-138 Dickinson RZ Dunkin 58 60 Downs FW: 239 Dunkin

Lora,

BMTS agrees completely with NYSDOT's comments dated September 28, 2021. We also add the following:

The application for this project is incomplete. Specifically, the application states that the intent of the proposed rezoning is to construct a drive-through only Dunkin'. All of the required approvals for Dunkin' (i.e. rezoning, site plan, variances) should be reviewed as a single action under SEQR in order to avoid segmented environmental review. Reviewing the project in its entirety (including any support documentation such as a Traffic Impact Study) would allow the Town, and any involved agencies, to consider all of its potential impacts prior to any decision. Even without a complete application or TIS we are aware, as detailed by NYSDOT, that establishing a commercial development on this site would result in negative traffic impacts that likely could not be mitigated.

Leigh McCullen
Binghamton Metropolitan Transportation Study

From: Murphy, Sean W. (DOT) <Sean.Murphy@dot.ny.gov>
Sent: Tuesday, September 28, 2021 4:59 PM
To: Zier, Lora M. <Lora.Zier@BroomeCounty.US>; McCullen, Leigh A. <Leigh.McCullen@BroomeCounty.US>; Yonkoski, Jennifer L. <Jennifer.Yonkoski@BroomeCounty.US>; Gowe, Brenda L. <Brenda.Gowe@BroomeCounty.US>; Lavrinovich, Eduard V. <Eduard.Lavrinovich@BroomeCounty.US>; Boulton, Leslie G. <Leslie.Boulton@BroomeCounty.US>; Laine, Matthew J. <Matthew.Laine@BroomeCounty.US>
Cc: Sperski, Rick (DOT) <Rick.Sperski@dot.ny.gov>; Phillips, Thomas D. (DOT) <Thomas.Phillips@dot.ny.gov>; Bump, Christopher (DOT) <Christopher.Bump@dot.ny.gov>; O'Connor, Jhomo R. (DOT) <Jhomo.OConnor@dot.ny.gov>; Taylor, Jennifer M (DOT) <Jennifer.Taylor@dot.ny.gov>; Conn, Jamie (DOT) <Jamie.Conn@dot.ny.gov>
Subject: RE: 239-2021-138 Dickinson RZ Dunkin 58 60 Downs FW: 239 Dunkin

Lora:

Please find the attached letter outlining the Regional Site Plan Committee's comments regarding the above proposal.

Thanks,

Sean Murphy
Regional GIS Coordinator/Regional Site Plan Review Coordinator/Primavera Technical Support

New York State Department of Transportation, Region 9
44 Hawley Street, Binghamton, NY 13901



Department of Transportation

KATHY HOCHUL
Governor

MARIE THERESE DOMINGUEZ
Commissioner

BRIAN KELLY, P.E.
Acting Regional Director

September 28, 2021

Ms. Lora Zier, Senior Planner
Broome County Department of Planning and Economic Development
Edwin L. Crawford County Office Building
60 Hawley Street
P.O. Box 1766
Binghamton, New York 13901

Dear Ms. Zier:

**RE: REZONING REVIEW – DUNKIN’
58-60 DOWNS AVENUE (NEAR NYS ROUTE 17),
TOWN OF DICKINSON, BROOME COUNTY
NYSDOT CASE #21-155**

The New York State Department of Transportation (NYSDOT) has reviewed the materials for the above-referenced proposal. NYSDOT does not support the proposed rezoning to the Highway Interchange Commercial zoning classification for these properties, as significant concerns exist based on the proposed or potential use of this site as a commercial development. Please note the following concerns and comments:

- The proposed use as a drive-through food service business does not appear to be practical, as the size and dimensions of the property will not provide adequate storage space for queuing vehicles. This will likely result in vehicles queuing within the travel lanes of Downs Avenue, which would create severe traffic obstruction and unsafe conditions, particularly as peak usage periods for this type of business generally coincide with peak travel times on the roadway network.
- Significant queuing of vehicles is often experienced on the Downs Avenue approach to the nearby traffic signal, with queues extending past the subject properties to Francis Street. These queues would frequently obstruct traffic turning into and out of the site. Additionally, it does not appear that timing changes to the signal system would mitigate any additional traffic impacts as the signal operations have been optimized by NYSDOT for all approaches.

- Downs Avenue is not configured in a manner that would be conducive to the establishment of a highway-based business corridor. The roadway is two lanes wide with no turning lanes, which might be necessary as mitigation for the proposal. However, it is unlikely that such mitigation would be possible in the Downs Avenue right-of-way. The nearby Market Street intersection also adds to traffic concerns in this area.
- NYSDOT encourages the Town to follow smart growth principles and consider how the permitted uses of this re-zoning may intensify impacts to transportation operations within the surrounding area and the adjacent R-2 zone for all future developments.

If you have any other questions, or need further assistance, please contact my office at (607) 721-8080.

Sincerely,
Original signed by
Sean Murphy for

Tony Signorelli, P.E.
Regional Traffic Engineer



State of New York County of Broome Government Offices

Department of Public Works

Jason T. Garnar, County Executive · Leslie G. Boulton, P.E., Public Works Commissioner

To: Lora Zier – Broome County Planning

From: Brenda Gowe - Engineer II

Date: October 4, 2021

Subject: DPW Engineering Review Comments
BC Case No: 239-2020-138 – Town of Dickinson
Rezoning – 58 and 60 Downs Avenue

The above referenced "239" has been reviewed by the Department of Public Works - Engineering Division, and the following is pertinent: This application includes a request for rezoning (R-2 to HIC), if approved will require ZBA special permit and variances and PB site plan review.

Broome County DPW-Engineering does not recommend rezoning of the parcels located at TM 143.51-3-5 and 143.51-3-6 based on the following observations:

- Downs Avenue is a County Route, and as such the developer will be required to install any new driveways in accordance with NYSDOT Policy and Standards for the Design of Entrances to State Highways. As the combination of the two lots results in total lot frontage of 100', it does not appear that there is adequate distance to install two driveways (in and out) in accordance with the guidance.
- The location of the project directly adjacent to the confluence of Airport Road, Market Street and Downs Avenue will create multiple conflict points for any traffic entering or exiting the proposed business.
- There is inadequate width on Downs Avenue to provide for the likely northbound queuing which will occur as a result of the lack of queuing length on-site. It is also highly likely that southbound traffic will queue into the Airport Road/Prospect Street and CFJ Blvd signalized intersection. No traffic study has been provided as part of this application.
- Rezoning of these parcels will increase and intensify the types of permitted uses which could occupy this site in the future.

BCDPW has no further comments related to the proposed Rezoning at 58 and 60 Downs Avenue in the Town of Dickinson.

BLG: blg

cc: Leslie Boulton, P.E. – Broome County Commissioner of Public Works
Sue Brown – Broome County Superintendent of Highways
Eduard Lavrinovich – Broome County Assistant Engineer

Zier, Lora M.

From: Zier, Lora M.
Sent: Wednesday, September 22, 2021 2:11 PM
To: Stephen Rafferty
Subject: BCHD Comments FW: 239-2021-138 Dickinson RZ Dunkin 58 60 Downs FW: 239 Dunkin

Steve:

Please see the email below from Matthew Laine with Broome County Health Department comments that need to be addressed for this project.

Sincerely,
Lora Zier
Senior Planner
Broome County Department of
Planning and Economic Development
Telephone: (607) 778-2114
Lora.Zier@BroomeCounty.US

From: Laine, Matthew J. <Matthew.Laine@BroomeCounty.US>
Sent: Wednesday, September 22, 2021 1:58 PM
To: Zier, Lora M. <Lora.Zier@BroomeCounty.US>
Subject: RE: 239-2021-138 Dickinson RZ Dunkin 58 60 Downs FW: 239 Dunkin

Lora,

No comments from BCHD on the rezoning. For the construction of a Dunkin at this location, BCHD has the following comments:

A food permit from the Broome County Health Department will be required for this project. Applicant may contact the Food Program Manager, Ben Holden, at 607-778-3923 for more information.

Applicant should contact the local water purveyor for backflow prevention requirements.

Answer to question 20 on the short EAF was indicated as "Yes" but with no description following the answer. Parcels at 10 Gannett Dr and 2 Gannett Dr were former sites of the Endicott Johnson-Ranger Paracord facility and placed in the NYS DEC Brownfield Cleanup Program. Remediation of sites was completed in 2006 and 2009, respectively. BCHD recommends consulting with Gary Priscott of NYS DEC Kirkwood Suboffice for more information and guidance related to potentially contaminated soils or soil vapors at project site associated with the former EJ-Ranger Paracord site.

Thanks,
Matt

Matthew Laine
Public Health Sanitarian
Broome County Health Department
225 Front St

Binghamton, NY 13901
Phone (607)778-2814
Fax (607)778-3912
Email: matthew.laine@broomecounty.us



**Public Health is
protecting the
water that you drink.**

From: Zier, Lora M. <Lora.Zier@BroomeCounty.US>
Sent: Wednesday, September 22, 2021 11:57 AM
To: McCullen, Leigh A. <Leigh.McCullen@BroomeCounty.US>; Yonkoski, Jennifer L. <Jennifer.Yonkoski@BroomeCounty.US>; 'sean.murphy@dot.ny.gov' <sean.murphy@dot.ny.gov>; Gowe, Brenda L. <Brenda.Gowe@BroomeCounty.US>; Lavrinovich, Eduard V. <Eduard.Lavrinovich@BroomeCounty.US>; Boulton, Leslie G. <Leslie.Boulton@BroomeCounty.US>; Laine, Matthew J. <Matthew.Laine@BroomeCounty.US>
Subject: 239-2021-138 Dickinson RZ Dunkin 58 60 Downs FW: 239 Dunkin

Leigh, Sean, Brenda, and Matt,

Please see the 6 attachments and the emails below for this project, including 4 from 2015. Please let me know if you need more information for the rezoning and or for the later site plan review, special permit, and variances if the TB approves the rezoning. I called and talked to Sean briefly about this project this morning.

I called Steve Rafferty this morning for more clarification. He just called back. The project is just for a drive-through. The parking on the one side he thinks could be for the employees. He does not have trip generation or traffic study or other documents to send. He said none of the TB members are in favor of this project. He does not know about the PB and ZBA members because it has not gone to PB and ZBA because the project might not even get the rezoning. He also pointed out that DOT had concerns in 2015. I told Steve that I was sending you 4 files from 2015.

Sincerely,
Lora Zier
Senior Planner
Broome County Department of
Planning and Economic Development
Telephone: (607) 778-2114
Lora.Zier@BroomeCounty.US

From: Stephen Rafferty <SRafferty@townofdickinson.com>
Sent: Tuesday, September 21, 2021 11:52 AM
To: Zier, Lora M. <Lora.Zier@BroomeCounty.US>
Subject: RE: 239 Dunkin

The traffic concern is the main problem. A previous application for these lots in 2016 or 2017 indicated that NYSDOT had serious concerns for the traffic pattern and location. There are also residents on the left side of the proposed lots that opposed the previous application. The previous application was withdrawn and no decision was made.

Steve

Sent: Tuesday, September 21, 2021 11:15 AM